




STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director 

DATE: October 14, 2004

RE: Report on 45-Day Letter Submitted by Evergreen Freedom Foundation
Against the Washington State Labor Council

On September 1, 2004, Jami Lund, on behalf of the Evergreen Freedom Foundation (EFF), filed a 45-day letter with the Office of the Attorney General alleging that the Washington State Labor Council (WSLC) violated several provision of the Public Disclosure Law. That same day, the letter was delivered to PDC staff for investigation.

The complaint alleges that the WSLC violated the following:

1. RCW 42.17.100 and 42.17.550 by failing to report independent expenditures,
2. RCW 42.17.640 by exceeding contribution limits,
3. RCW 42.17.128 by using public funds to affect elections,
4. RCW 42.17.040 through 42.17.080 by failing to register and report as a political committee,
5. RCW 42.17.640 and 42.17.660 by creating a second "illegally hidden" political committee,
6. RCW 42.17.670 and 42.17.730 by failing to report earmarked contributions,
7. RCW 42.17.760 by using non-member fees to affect elections.

Alleged Violation 1: RCW 42.17.100 and 42.17.550

A.

The complaint alleges that the WSLC is not a labor organization and therefore cannot claim the exemption of "internal political communications" when engaged in a "massive communication" effort that supported or opposed candidates and ballot issues.

According to RCW 42.17.100, independent expenditures do not include internal political communications primarily limited to members of a labor organization or other membership organization. The WSLC does not maintain that their political activities were done without the encouragement of or collaboration with the candidates involved.



However, it does maintain that there was no reporting obligation because the activity was directed to members.

EFF argues that the individual union members are not members of the WSLC.

The WSLC considers itself a labor organization. EFF believes otherwise. However, whether or not it is a labor organization is irrelevant in determining whether its communications were distributed primarily to members, because the WSLC is an organization which has dues paying members. Unions pay membership dues to the WSLC in the form of a per capita assessment.

The WSLC has produced political advertising, conducted door-to-door campaigns to distribute political literature to union members, mailed political literature to union households, and engaged in phone banks in support of candidates to union households.

In 1995, the Commission adopted Interpretation 95-04, Internal Political Communications of Membership Organizations. The interpretation states that "if a membership organization and its members satisfy the criteria regarding 'membership organizations' and 'members' established by the Federal Election Commission (FEC) in 11 CFR 100.8(b)(4), the Public Disclosure Commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020(14)(b)(v)..."

RCW 42.17.020(14)(b)(v) specifies what is not a contribution. At the time the interpretation was adopted, efforts were concentrated on implementing contribution limits. Since the language in RCW 42.17.020(14)(b)(v) that exempts "internal political communications" from the definition of "contribution" is identical to the language in RCW 42.17.100 that exempts "internal political communications" from the definition of "independent expenditure", the interpretation should uniformly apply to both.

The FEC regulation includes the following language: "...members of a local union are considered to be members of any federation with which the local, national, or international union is affiliated."

Since the WSLC has communicated primarily with union members or union households, the activity does not qualify as an independent expenditure, or in the alternative, a contribution to the candidates or ballot issues supported or opposed by the WSLC.

B.

The complaint also alleges that the WSLC included retired union members in the group targeted for its communication effort. No evidence was provided or obtained to demonstrate that the WSLC targeted retired union members. Twice a year, the WSLC obtains updated member lists from each member union. The WSLC compares those lists with its list of members and removes any individual who is no longer a union member.

C.

Finally, the complaint alleges that the WSLC trained volunteers to assist in their door-to-door efforts. The WSLC has trained union members on a variety of issues. The unions who send representatives to the training pay for the training.

Staff Recommendation: Alleged violation 1 has not been substantiated and merits dismissal.

- A. The WSLC communicated with individuals who are considered members pursuant to Interpretation 95-04.
- B. There was no evidence that the WSLC communicated with retired union members.
- C. The WSLC did not expend its own funds to pay to train volunteers to assist with its campaigning effort. Unions always pay for the WSLC training their members receive.

Alleged Violation 2: RCW 42.17.640

The complaint alleges that the WSLC exceeded contribution limits when it gave funds to candidates who were also supported financially by some unions.

Staff Recommendation: Alleged violation 2 has not been substantiated and merits dismissal.

The WSLC does not share limits with each union simply because the unions are members of the WSLC. The complainant failed to provide evidence that any of the factors in WAC 390-16-309(3) were satisfied.

Alleged Violation 3: RCW 42.17.128

The complaint further alleges that the WSLC used public funds to affect elections. EFF speculates that these funds were co-mingled with general funds, and if they were, the funds were used for political purposes.

Staff Recommendation: Alleged violation 3 has not been substantiated and merits dismissal.

The WSLC receives grants from public agencies. Each grant is kept in a separate bank account and not co-mingled with other funds. No public funds were used for political purposes.

Alleged Violation 4: RCW 42.17.040 – 42.17.080

The complaint alleges that the WSLC is a political committee, since one of its purposes is to engage in "significant election-affecting" activities. It bases this allegation, in part, on the fact the WSLC has listed as one of the services it provides as "political action." It also states that the WSLC's expenditures are "significant and must be calculated in determining the percentage of the WSLC's activities that are dedicated toward election-affecting purposes."

In State of Washington, ex rel. Evergreen Freedom Foundation v. Washington Education Association, No. 25272-4-II, the Court of Appeals said that any analysis used to determine primary purpose of an organization should not be applied as a formula. It said that one should evaluate the stated goals and mission of the organization and whether the organization's actions further its stated goals, and whether the goals of the organization would be substantially achieved by a favorable outcome in an election.

The WSLC has six major programs it engages in. The political program, or COPE, does not encompass a majority of WSLC's activities. Most of the other programs are not related to its political activities. Of its expenditures in fiscal year 2001 and 2003, less than 14% was spent on activities that supported or opposed candidates or ballot issues. Except for 2002, less than 15% of hours worked by all employees of the WSLC are attributed to supporting or opposing candidates or ballot issues. In 2002, the amount was slightly higher when they hired temporary workers to assist on a project.

Diane McDaniel, Political Director for COPE, states that she spends approximately 40% of her time on activities that support or oppose candidates or ballot issues. The remainder of her time is spent on developing voter registration programs and materials, assisting member unions with compliance with PDC and FEC rules and regulations, maintaining a current membership list of AFL-CIO members in Washington.

In answering this allegation, Jim Oswald, counsel for the WSLC, said "The importance of elections is that they alter the environment in which the WSLC attempts to achieve its stated goals, and thus make it more or less difficult to achieve those goals...Regardless of the outcome of elections, the WSLC would continue to pursue its goals and missions. This is because WSLC is not a political organization. It is a labor organization that participated in the political process as one of many ways that it advances its stated goals and missions."

Staff Recommendation: Alleged violation 4 has not been substantiated and merits dismissal.

The Court of Appeals made it clear that if a majority of an organization's activity was not devoted to supporting or opposing candidates or ballot issues, one must evaluate whether the organization's goals and mission would be achieved by a favorable outcome in an

election. The WSLC's goals are to bring together all unions and act harmoniously in matters affecting the unions and their members.

As counsel stated, the WSLC would continue to pursue its goals and mission regardless of the outcome of an election. The WSLC would continue to be in existence even if it were not engaged in the political process.

Alleged Violation 5: RCW 42.17.640 and 42.17.660

The complaint alleged that the WSLC and its political committee created another political committee in an attempt to circumvent contribution limits.

Some employees of the WSLC are members of the Office and Professional Employees International Union Local 8. Some of these employees were not happy with the choice of candidates supported by their union. They formed their own political committee to make contributions to candidates of their choosing.

Staff Recommendation: Alleged violation 5 has not been substantiated and merits dismissal.

SIC-PAC does not have overlapping membership with WSLC, nor does the WSLC or its officers have a significant role in the formation or operation of SIC-PAC. SIC-PAC was not established, maintained or controlled by the WSLC.

Alleged Violation 6: RCW 42.17.670 and 42.17.730

The complaint alleged that the WSLC earmarked funds provided to SIC-PAC for candidates who had already received the maximum contribution from WSLC. The complaint also alleges that the WSLC gave funds to the Washington State Democratic Central Committee (WSDCC) earmarked for specific candidates.

The WSLC gave no contributions to SIC-PAC, but did give funds to both the exempt and non-exempt funds of the WSDCC. Diane McDaniel and Paul Berendt, Chair of the WSDCC, both confirmed that contributions received from the WSLC were not earmarked for specific candidates.

Staff Recommendation: Alleged violation 6 has not been substantiated and merits dismissal.

No evidence was provided that the WSLC earmarked contributions through either SIC-PAC or the WSDCC.

Alleged Violation 7: RCW 42.17.760

The complaint alleged that the WSLC used non-member, or agency shop fees for political purposes. The complaint indicates that unless WSLC segregated those funds, they may have been used for political purposes.

The WSLC receives its funding from the per capita assessment placed on its member unions. The per capita amount is based on the number of members in each union.

The complainant provided no evidence that any agency fee money was included in the per capita amount sent to the WSLC or that it had used the funds for political purposes.

Staff Recommendation: Alleged violation 7 has not been substantiated and merits dismissal.

Staff contacted two unions and was informed that these unions calculated the per capita payment on membership only, and did not include non-members or retired members into the count.